

ORDINANCE NO. 2859

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.27 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2021, a zoning application, denominated Change of Zone No. 1954 was filed on behalf of American Storage of Delaware, LLC; and

WHEREAS, on the 14th day of April 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1954 be approved; and

WHEREAS, on the 14th day of June 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299), being Parcel #1 shown on the site plan entitled, “American Storage of Delaware” prepared by Scaled Engineering and being more particularly described in the attached legal description prepared by Scaled Engineering, said parcel containing 8.27 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2859 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF JUNE 2022.

**Tracy N. Torbert
Clerk of the Council**

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of American Storage of Delaware, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a portion of a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 8.27 acres, more or less (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile south of the intersection of Autumn Road [S.C.R. 299] and Bay Farm Road [Route 299]) (911 Address: N/A) (Tax Parcel: 234-29.00-49.02 [portion of]).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mackenzie Peet, Esq. with Baird Mandalas Brockstedt, LLC, was present at the Sussex County Council hearing on behalf of the Applicant, American Storage of Delaware, LLC, together with Steven Spence, Esquire, co-counsel, and Mr. Carlton Savage, P.E., Scaled Engineering, Inc.; that the Applicant intends to construct a mixed-use development, involving multi-family residential housing and a commercial storage facility component; that the site is located on the western side of Route 24 (John J. Williams Highway) and south of Yeshua Lane in Millsboro, Delaware in Indian River Hundred; that C/Z 1954 requests a rezoning of a 8.27-acre portion of Tax Map Parcel No. 234-29.00-49.02, from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial); that this area is defined as Parcel 1 on the Preliminary Site Plan; that the rezoning was requested with the intention to develop 150,000 sq. ft. of commercial storage space, which would also include 1,200 sq. ft. of office space; that the commercial storage space would be for a three-story miniature warehouse; that currently the warehouse is proposed to have 838 units; and that this use is permitted within the C-3 (Heavy Commercial) Zoning District.**
- C. Council also found that the project is located within Investment Level 2 and Level 3 according to the Strategies of State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated in the near term; that Investment Level 3 reflects areas where growth is anticipated within a longer term; and that, as confirmed by the PLUS comments, the Office of State Planning and Coordination have no objection to the proposed rezoning and development provided it is compliant with the Comprehensive Plan and all applicable Codes and Ordinances.**
- D. Council found that nearby commercial and residential communities exist; that nearby commercial uses include the shopping center located at intersection of John J. Williams Highway and Bay Farm Road; that past the intersection of Route 24 and Route 23 are commercial uses such as a car wash, Giant grocery store, Arcadia Healthcare, and multiple fast-food establishments including Dunkin Donuts and McDonalds; that at the intersection of Route 24 and Mount Joy Road is Royal Farms, a church and a small strip mall, as well as a deli and tattoo parlor; that the Coastal Area is designated as a growth area within Sussex County; that mixed-use development, like the proposed Application, is permitted within the Coastal Area; that the Applicant's plan is consistent with the Comprehensive Plan and complies with the Coastal Area requirements of Section 115-194.3 of the County Code; that Section 115-194.3 of the Sussex County Code requires the Applicant's submission of the Environmental Assessment and Public Facility Evaluation Report and sketch plan for the project, as it proposes 50 or more dwelling units and 75,000 sq. ft. or more of floor area for commercial use; that Scaled Engineering report stated a combination of wet ponds, planted buffers and infiltration practices will be used for stormwater treatment; that stormwater will be discharged in accordance with the State of Delaware and Sussex Conservation District requirements; that water will be provided**

by Tidewater Utilities; that the Sewer Service Evaluation confirmed the project is located within Tier 2 with a need for 146 EDU's, with 140 EDU's for the multi-family component; that sewer and water infrastructure necessary to connect to the public utilities will be constructed by the developer; and that electric will be provided by Delmarva Power.

- E. Council also found that the increase in traffic and effect on surrounding roadways will be analyzed, reviewed and approved by DelDOT; that indicated within the PLUS comments, the improvements will generate less than 2,000 average daily trips and less than 200 peak hour vehicle trips; that this allows the developer to pay an area wide study fee in lieu of performing a Traffic Impact Study; that the fee would require an estimate payment of \$11,710.00; that DelDOT anticipates having the developer contribute to a DelDOT project presently scheduled for construction in the summer of 2022 at the intersection of Route 24 and Mount Joy Rd. and the intersection of Route 24 and Bay Farm Rd.; and that the mandatory shared-use path, as required by DelDOT, will be added to the Final Site Plan.
- F. Council also found that no critical habitat areas exist on the site; that no federally listed or endangered species are located on the site; that no wetlands, streams and drainage conveyances exist on or nearby the site; that the site is presently vacant and consist of 11.5-acres of agricultural land; that 14.4-acres of immature trees, which were previously cut in 2004; that the Applicant understands the preservation of natural resources and open space is strongly encouraged in the Coastal Area; that the project proposed roughly 11-acres of open space to be preserved; that the Applicant requests a rezoning of a 8.27-acre portion of Tax Map Parcel 234-29.00-49.02 from AR-1 to C-3 to develop 150,000 sq. ft. of commercial space, a permitted use within C-3 or a similarly permitted use; that the proposed rezoning is compatible with the surrounding community and will have not an adverse effect on immediately adjacent properties or properties within the vicinity of the site; that the C-3 (Heavy Commercial District) is usually intended for larger scale service businesses along major arterial roads; that the intended rezoning is consistent with the purposed of the C-3 Zoning District.
- G. Based on the Findings (1 through 7) of the Planning & Zoning Commission, Council found that:
1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations. Although a number of uses are permitted, this Applicant intends to construct a mini-storage facility on this site.
 2. Route 24 is considered to be a Major Collector roadway according to DelDOT's roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.
 3. The parcel is in a section of Route 24 where there are commercial districts and business and commercial uses that have developed. This includes a shopping center with a large grocery store, a smaller strip mall, and other similar uses. This location along this part of Route 24 is appropriate for this type of zoning.
 4. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
 5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
 6. No parties appeared in opposition to this rezoning application.
 7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

H. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.